

BOARD OF ZONING APPEALS
MINUTES
SEPTEMBER 9, 2009

The special hearing of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on September 9, 2009 in the Planning Department Director's Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance.

BICKLEY FOSTER, DWIGHT GREENLEE, JOSHUA BLICK (in @1:40 PM), CHARLES YOUNG, STEPHEN HERMANN

Board members absent:

STEVE ANTHIMIDES

City of Wichita staff present:

None

The following Planning Department staff members were present:

JESS MCNEELY, Secretary

DALE MILLER, Current Plans Manager

GREENLEE We will start the meeting at 1:40 PM. The first thing on our agenda is to approve the minutes for the June 23, 2009, Hearing.

BLICK I move that the minutes of June 23, 2009, be approved as corrected.

FOSTER Seconded

GREENLEE All in favor say Aye?

Motion carries 5-0 unanimously

GREENLEE We will now hear a front reduction setback variance request on property own by Refugio DeLoera for case **BZA 2009-29**.

STAFF REPORT I am Jess McNeely Planning Staff here to present BZA2009-29. **BACKGROUND:** The applicant requests a variance to reduce the Zoning Code required front building setback from 25 feet to 9 feet for an existing attached garage addition. The garage addition was built by the applicant in 2004. A complaint was filed against this property in March of 2009 because the garage had been built without a permit. The inspector discovered that the garage encroaches into the required front building setback. The applicant also built a fence along the side and front property line which partially screens the garage from ground view. Within the immediate block, no other garages exist in the front setback, nor do any structures encroach into the front setback. The result is a very uniform front yard and setback appearance created by the houses all at a similar distances from the street.

The application area was built in 1948 under Zoning Code setback requirements identical to today's setback requirements. The house was originally built with a 30-foot front setback, similar to all surrounding houses on this block. The house has a 10-foot side setback from the east property line, giving possible vehicle access to the property's rear yard. No rear alleys exist within the application area subdivision. All surrounding properties are also zoned SF-5 and developed with single-family residences.

ADJACENT ZONING AND LAND USE:

NORTH SF-5		Single-family residences
SOUTH SF-5		Single-family residences
EAST	SF-5	Single-family residences
WEST	SF-5	Single-family residences

The five criteria necessary for approval as they apply to variances requested.

UNIQUENESS: It is staff's opinion that this property is not unique. This property was developed in 1948 under the current Zoning Code setback requirements. This property is developed similarly to all surrounding properties. The dimensions of this lot would not prevent improvements which could be feasibly placed within code required setbacks. The only possible uniqueness to this property would be the unpermitted garage addition which encroaches into the front building setback.

ADJACENT PROPERTY: It is staff's opinion that granting the requested variance for a front setback reduction could adversely affect the rights of adjacent property owners. The requested front setback reduction from 25 to 9 feet obstructs neighboring properties' views up and down the street. However, the fence along the front and side property line is permitted on the applicant's property by right, and has a similar visual effect of limiting neighbor's views.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the code could constitute a hardship upon the applicant, as the existing garage would require demolition. However, state code specifically states that a variance hardship is one which the property owner did not bring upon himself. Likewise, this property would have other options to construct a garage in the rear yard which would meet setback requirements.

PUBLIC INTEREST: It is staff's opinion that the requested variance for a front setback reduction could adversely affect the public interest, as visibility on Range Road would be constrained at this location.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance for a front setback reduction could oppose the general spirit and intent of the Zoning Code. The reduction of the front setback would be contrary to the code intent of a uniform street building setback and the visibility created by that setback.

RECOMMENDATION: It is staff's opinion that the requested variance does not meet the five criteria necessary to grant a variance. The Board of Zoning Appeals has granted variances to setbacks for

additions that encroach into the front setback in the past. But historically, those variances were not as significant in reduction as this request. Likewise, similar variances previously approved by the BZA were on properties platted and developed under outdated Zoning Code setback standards (unlike this case), with similar setback encroachments in the surrounding neighborhood (unlike this case) and with circumstances that would have no effect on neighboring properties. Therefore staff recommends that the variance be DENIED. However, should the Board determine that the conditions necessary for the granting of a variance exist; the Secretary recommends that the variance to reduce the front setback from 25 to 9 feet be subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The setback reduction shall apply only to the attached garage as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits necessary for the improvements within one year of the granting of the variance.
4. The structure on the site shall conform to all other codes, to include but not limited to building and fire codes.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

MCNEELY Are there any question of staff?

FOSTER Do all those houses have garages?

MCNEELY I did not complete an analysis to see how many houses had garages. The houses were built in the late 1940's and the houses with garages would have been built with a single car garage. By today's standards, garages built then would be hard to accommodate today's vehicles.

FOSTER The house in question, did it have a garage originally before this one was added?

MCNEELY Question for applicant? If you look right here you will see a curb cut on the west side of the property and it was moved from the west to the east side of the property. Looking at old aerials, I believe, if it had a garage, it would have been on the west side of the house but I do not have any information on it.

FOSTER Would the Curb cut have included a permit as part of permit for garage?

MCNEELY No permit was issued for garage and I doubt if the curb cut had a permit as well.

FOSTER People are normally required to get a permit with a curb cut.

MCNEELY Right

FOSTER Rock wall in front is on right-of-way?

MCNEELY Foraker drawing shows that the rock wall goes over the property line into the right away. They will have to move it back to the property line or get a minor street privilege issued. A wall would be permitted at this height.

FOSTER On the drawing it looks like it is considerably over.

MCNEELY From the drawing, it looks barely over the property line.

FOSTER On the side drawing, it is 10.80 one of figures for amount of side yard, you say that has changed, you have new information?

MCNEELY According to Foraker's information, gas line impedes Less than 10 feet for drive out space.

FOSTER You still can drive over a gas line, right?

MCNEELY Yes, but if the meter is in the way that is one of the issues may be considered.

GREENLEE It shows Lot 7, is that all one lot?

MCNEELY Correct, it is one platted lot.

GREENLEE What is that easement showing right there?

MCNEELY Sewer easement

GREENLEE There is no way to drive up and down that easement?

MCNEELY Well if someone wanted to, they can jump the curb and drive down the easement. I do not believe anyone would want to access the property that way. There is no legal means to access the rear of the yard from Hillside.

GREENLEE Do you think they can apply for a curb cut there?

MCNEELY I do not believe a curb cut off any main arterial streets will be granted.

GREENLEE Would the agent or applicant like to speak next? Please come to the podium, give us your name and address.

FORAKER Good afternoon, I am Harlan Foraker, CERTIFIED ENGINEERING DESIGN, P.A., 810 W. DOUGLAS, Agent for the applicant, Mr. and Mrs. DeLoera. I will give a brief background then go through the 5 criteria. I have photos to share. I may need a little more time but I will request it after my 10 minutes. DeLoera and his brother purchased this property in 2000. It was a rental property at that time that was rather runned down. In 2004, he built a garage without a permit. He did not do his research at that time. He quick claimed deeded from his brother. He has made substantial improvements to the property since that time. I am trying to get an approval for the setback on today. This is the plat of Pawnee ranch addition. We believe the property is unique because it is encumbered by a sanitary sewer easement along the east side and also down through

the middle of the lot. There is a sanitary sewer in there. Part of the reason the east side is limited to less than 10 feet is due to the sewer and the fence. I want to point that out to you. There is a colored sanitary sewer line map that I obtained from the Water department to show you there is a sewer line. The location of it is not all that accurate, but it is there on that lot. Next is a ground level visual, showing that there is an existing fence there on that lot and also the garage. This is a photo taken from the east. The fence verses the extension of the garage shows that the fence is more of obstruction to the visibility than the garage itself. The property here is currently vacant and for rent. If a vehicle would be pulling out onto Range road, this would be the prospective on how far out you would be before pulling into traffic. There would be other factors that would potentially block the view there namely trees. The property line runs right down the middle of the wall. There is a portion of the wall out on the right-a-way. The driveway was constructed with a City permit by a commercial contractor named Raymond's Concrete.

Here are a few photographs of the side, that has been indicated, that could have been used to access the back of the property (which we do not believe is the case). Because of the limitations of the sanitary sewer easement, the sewer line in there, the fence that has been constructed along the east side of the property, a gas meter located on that side which has some protection bollards, we do not feel it is suited for a usable driveway. Here is a view from the north that shows how tight it is. We feel the property is severely restricted to build a garage in the back with a driveway to access it. The fence is located to the west of the property line. That does limit this and the dimension is 7 feet and 11 inches from this pipe bollard to this fence. Although the dimension on the survey shows 10.8 feet that is from the property line from the east of the fence to the front of the house. So, there is not 10.8 feet between those points. There is no way to get a curb cut off of Hillside to access his backyard from Hillside. He would have to drive his car through someone's yard to get to his back yard. There is a clean out located here for the sewer line. The rear of the lot is not feasible to access for the construction of the house. I would like to represent a suitable location to build a garage. The back yard is not suitable for this lot to build a garage. The sanitary sewer creates an uniqueness and none of the other properties has this situation. This sanitary easement creates a restriction. Not only is there not an alleyway there but there is a sanitary sewer easement that restrict the property. Yes, you can drive over a sanitary easement, however, should there ever arise a need for work there, a fence could be taken down, it would become in-accessible for a duration and no one could drive through there until completed as well as it being too narrow. Mr. Chairman, Can I get 3 more minutes? As far as the adjacent properties, Mr. DeLoera has made contact with adjacent property owners. The property to the west is a rental property and the property to the east is a vacant rental property. We had not received any comments from them. As far as complaints, Mr. DeLoera was delivering shingles and working after dark when the neighbors complained of disturbance. It was back in 2004 when it was constructed. There is no neighborhood opposition to this front setback variance at this time. It is our understanding that the complaint was filed in 2009 because a City inspector was out checking whether a permit was issued on this garage. I have letter from several property owners that says he has made several improvements to the property he keeps his property up well and has improved the looks of the property.

Hardship, we do not believe that putting a garage in the back is correct, and not being allowed to have a garage will be a hardship and the lost of the garage will cause a loss to the value of the property for the applicant. The existing house is 30 feet. So, it is 5 feet beyond the platted setback so there is a bit of variance there but it is not enough to build a garage without a front setback variance. Public Interest, we do not think the granting of the variance it will affect the public's health, safety, morals, order, convenience, prosperity, welfare or harmonious development. One issued address here is the visibility. We believe the fence creates more of an obstruction to the visibility than does the garage. And the removal of the garage will not improve it. Spirit and Intent, We understand a uniform building setback in that all house to all line up; there is some variance already there because of the road is angled or curved with the fence; there are some variation. I stand for any questions at this time.

- BLICK Existing garage do you have the measurements and is it a single car garage to two-car garage? What is the square footage?
- FORAKER Because it loads on the side it is almost a double car garage; sorry, I do not have exact dimensions. Right now, he uses it for a single car.
- BLICK Was that vehicle parked in that garage?
- FORAKER Yes, he parks that car in that garage. Right now, he is only using it for a single car but it has additional room in there.
- FOSTER You were thorough with providing information in your presentation. This is much more than we normally see. Good job in representing your client. The problem with this BZA case is that it is already built. Normally the board looks at a case prior to being built instead of after it is built. Did I understand that when this house was built, did it already have a garage?
- FORAKER I do not know. Deloera indicated that it did not have a garage.
- FOSTER All the other houses in the area have a garage. We need to clarify whether it did or not. The exit to this garage would not go directly into the street which is one of the advantages. It is 9 feet from the street. He will still be backing on his property to make the turn. Another advantage is that the neighbor to the east does not face parallel to this house it faces the other direction so they are not looking straight at this. Is the applicant in the building industry? He personally built this is that what I understand?
- FORAKER He works in the roofing business. I think he was unaware that he needed to pull a permit for building his garage at City Hall.
- FOSTER Similar situation last year, if you look up and down street don't see any garage that should raise flag whether they can do this or not.
- FOSTER You are an engineer. Looking at materials and the plat for this area, I did not see a setback on it this property.

FORAKER Some of the older plats didn't put the setback on the plat. It was left for zoning.

MCNEELY We confirmed there was no platted set back on the plat.

FORAKER The typical width for parking has the lane widths 11-12 feet. Subdivision Regulations on parking stall gives 8 feet for parking. If you work to approve this, the applicant would adhere to conditions.

FOSTER He did get a permit for curb cut and drive way. Why did they not catch this?

FORAKER Applicant hired a commercial contractor for the curb cut. As far as we know, that may have brought the red flag to the building by the officials.

FOSTER Do you think it was gravel there originally?

FORAKER Driveway built in 2005? The complaint was issued in 2009.

FOSTER Was a garage there when he bought the house.

DELOERA Mr. Refugio DeLoera, 2153 Range Road, There may have been a garage there but garage was turned into a living space when I purchased the house there was not a garage.

FORAKER I think he saying when he bought the house the garage was already turned into living space.

BLICK Is there construction on house right now, is that fiber board?

DELOERA I am going to reside my house but I need to get his permit first.

GREENLEE Any other board members have comments?

FOSTER Very mixed feelings on this case, I see both sides, extenuating circumstances. If the applicant had applied originally, this might not have been approved to less than 9 feet out. There have been very few cases where people have gone to 8 feet but not this kind of distance. Think there are extenuating circumstances here. The fact that the house was bought without a garage, the garage does not back out into the street he can turn around on his property. It is not a problem to the neighbor on the east o look out their side door, and there was no setback on the property plat.

MCNEELY Yes, the property faces to the north or towards Hillside.

FOSTER Am I correct that a person does not have to get a permit to put up a fence under a certain height? One of those cases that is 50/50 thing, I agree it would be difficult to access backyard due to the meter. That can be dangerous if one were to hit it.

McNEELY No permit for fences 8 feet and under.

GREENLEE	Any members who would like to speak to this?
BLICK	You can relocate gas meters. I agree with Bickley 50/50's and the obstruction if we decide to keep it.
YOUNG	My recollection, the reason we have zoning is to use the land wisely and put to good use. It is to allow someone to improve it. Deloera has made good improvement to that property. Even though he did not get a permit, it would put an undo hardship on the owner.
FOSTER	I think if we approve it we would need to have the staff report re-written.
MCNEELY	I drafted resolution same five criteria for approval. I think we could summarize in a motion, take action on this today and redo resolution. If someone would summarize the 5 criteria again.
HERMANN	I worry about setting precedent, in this case, the conditions abode is well for this being approved.
FOSTER	Five points
GREENLEE	Agree that this is unique. Impresses me, even though it is in violation of the code, is the best looking property I see in the pictures...congratulate owner for improvements on property.
FOSTER	Uniqueness – it is unique
MCNEELY	It has no garage when first purchase by this property owner; difficult to access back of property due to the gas meter and sewer easement and don't back directly onto the street and the property to east faces opposite direction.
FOSTER	Hardship to replace; public interest is served – garages are good
YOUNG	Comment that there hasn't been any opposition from adjoining landowners.
FOSTER	Spirit and Intent, is not to set precedent.
MCNEELY	With Spirit and Intent of the code is to allow improvements to property. I think this reflects the five criteria as summarized.
FOSTER	Amend findings as set out in secretary's report reflect comments provided to staff, I move that the board accept the findings that all five conditions set out in 2.12.590 B as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report. Does this match up?
MCNEELY	Yes

YOUNG Seconded

GREENLEE Emphasis the fact that we are not setting a precedent and that there are extenuating circumstances.

BLICK Make sure applicant pulls permit again for his new improvements.

Motion carries 5 unanimously

YOUNG Excused himself at 2:45 PM. I have looked at the next case and I support the finding in the staff report along with the conditions.

GREENLEE Next we will hear case BZA2009-31 – Airport Overlay district.

STAF

BACKGROUND: The application area is an SF-5 Single-family Residential (“SF-5”) zoned elementary school at the intersection of Gouverneur and Apache Drive. The applicant requests a variance to Section III-C.5.f,(4)(d)(3) of the Unified Zoning Code (UZC). This section of the code deals with the Airport Overlay District that regulates the type and intensity of uses on property located within the Airport Overlay District. In general, the purpose of these regulations is to protect the public and the mission of the airbase by establishing maximum concentrations of people beneath the takeoff and approach paths of the airbase. In this request, the applicant seeks to expand the size of the existing school building. Section III-C.5.f,(4)(d)(3) of the UZC states, “Any use or building may be expanded so long as the total expansion of the use or building: is intended as an accessory use for storage, warehousing, or other similar low occupancy use.” The applicant proposes to add approximately 5,300 square feet to the school; the addition will include classroom space and a FEMA shelter, see the attached site plan. Because the addition will contain classrooms and will be occupied by students, the addition is not permitted by the Airport Overlay District, as the addition is not for storage, warehousing, or other similar low occupancy use. The applicant’s attached justification indicates that the addition is not intended to increase the school’s enrollment. This school sought and received a similar variance in 2004.

ADJACENT ZONING AND LAND USE:

NORTH	SF-5	Single-family Residential	Residences
SOUTH	MF-29	Multi-family Residential	Residences
EAST	MF-29	Multi-family Residential	Residences
WEST	SF-5	Single-family Residential	Residences

UNIQUENESS: It is staff’s opinion that this property is unique, as the property is developed with an elementary school that is subject to the Airport Overlay District. The subject property is the only school property located with the Airport Overlay District.

ADJACENT PROPERTY: It is staff’s opinion that granting the requested variance will not adversely affect the rights of adjacent property owners, as this site has been an elementary school for many years, the

size of the addition is small in comparison to the existing school and the overall school site, and the addition is to be setback 80 feet from the nearest property line.

HARDSHIP: It is staff's opinion that the strict application of the provisions of the Airport Overlay District would constitute an unnecessary hardship upon the applicant, as the addition serves the purpose of improving student safety and education. Student population could increase whether the addition is completed or not.

PUBLIC INTEREST: It is staff's opinion that the requested variance would not adversely affect the public interest, as the school already exists, the addition is small when compared to the existing improvements, the addition is being constructed to improve student safety and education, and the proposed addition meets all the other requirements of the Airport Overlay District.

SPIRIT AND INTENT: It is staff's opinion that granting the requested variance would not oppose the general spirit and intent of the Airport Overlay District. The proposed addition will not significantly contribute to a concentration of larger numbers of people under the runway takeoff and approach paths. The concentration of people at the school is a pre-existing condition that will not change significantly by granting the requested variance.

RECOMMENDATION: It is staff's opinion that the requested variance is appropriate, and will overall improve student safety at this school site. Should the Board determine that the five conditions necessary to grant a variance exist, the Secretary recommends that the variance be GRANTED, subject to the following conditions:

1. The site shall be developed in conformance with the approved site plan.
2. The variance shall apply only to the addition as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the Unified Zoning Code unless a separate variance is granted.
3. The applicant shall obtain all permits necessary for the improvements within one year of the granting of the variance.
4. The structure on the site shall conform to all other codes, to include but not limited to building and fire codes.
5. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

Are there any question of staff?

GREENLEE Does staff have any question of Applicant?

DWAYNE RUMSEY – ARCHITECTURAL DEVELOPMENT SERVICES, 407 N. WACO, 67202.

BLICK Does the applicant agree with all conditions of staff?

RUMSEY Yes.

GREENLEE It says it does not intend to increase population of schools. Are they anticipating that this neighborhood will increase in population to this school because of the busing area changes?

RUMSEY Not privy to any discussion about that at all.

GREENLEE Any other comments from the board?

FOSTER Comments on Chairman's point.

MCNEELY Busing is pretty relevant. All schools were looking at improvement in how to function better. It is not like that is future land committed for future developments to assist with increase population changes.

BLICK The reason I asked was because we had some issues with screening with USD 259.....within one year etc.

GREENLEE Any comments from Air Force base or government personnel?

MCNEELY No, Air Force was not notified since they are not a property owner within two hundred feet of this property.

FOSTER Was the variance written into regulations for the Airport Overlay ?

MCNEELY No, specific discussions of variances. There is no way it would be different than the rest of the zoning code.

GREENLEE Do I hear a motion?

BLICK I move that the board accept the finding of fact as set forth in the secretary's report that all five conditions set out in 2.12.590 B as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

GREENLEE Seconded

Motion carries 4-0 unanimously

BLICK I appreciate staff showing up. Is there any way we can get J.R. Cox to show up? I have question regarding Mel Hambelton.

MCNEELY I can try to have him at our next meeting. No applications for September meeting.

FOSTER May we assume that we will not see temporary sign again?

MCNEELY I have not heard back from that applicant.

GREENLEE There was a time when we had a property up north that was restricting a neighbor to make improvements on his property.

BLICK I like to make a motion to adjourn.

FOSTER So moved.

Adjourned at 3:00 PM